

1 HONORABLE CHRISTOPHER M. ALSTON

2 HEARING DATE: FRIDAY, SEPTEMBER 7, 2018
3 HEARING TIME: 9:30 A.M.
4 LOCATION: 700 STEWART STREET, COURTROOM 7206
5 RESPONSE DUE: FRIDAY, AUGUST 31, 2018

6

7

8 UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON

10 In re

11 CRITICAL POWER EXCHANGE, LLC,

12 Debtor.

No. 18-12037 (Chapter 7)

MOTION FOR RELIEF FROM STAY TO
PROCEED WITH STATE COURT
LITIGATION

13

14 SYNNEX Corporation (“SYNNEX”), a Delaware corporation, moves the Court for an order
15 granting it relief from stay to proceed with litigation against the Debtor pending in the Superior Court
16 of the State of California for the County of Alameda (Case No. RG16818192) (the “Litigation”). This
17 motion is based on the files and records herein and on the accompanying Declaration of Jane Fogarty.

18 In support of this motion, SYNNEX states:

19 **I. BACKGROUND**

20 On May 6, 2014, SYNNEX entered into a Purchase Agreement with the Debtor for the sale of
21 a generator. Upon inspection, SYNNEX concluded that the Debtor misrepresented the condition and
22 prior use of the generator. SYNNEX determined that the Debtor’s misrepresentations damaged
23 SYNNEX by at least \$886,000.

MOTION FOR RELIEF FROM STAY TO PROCEED WITH
STATE COURT LITIGATION – Page 1

BUSH KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

On June 3, 2016, SYNNEX filed the complaint that initiated the Litigation against the Debtor. See Exhibit A to the Fogarty Declaration. On August 2, 2016, the Debtor filed its answer. The Litigation has actively proceeded since its initiation, including the addition of third parties. The Litigation was set for mediation on May 24, 2018.

On May 21, 2018, the Debtor filed this case by filing a petition, without the accompanying schedules and statement of financial affairs. Docket Entry No. 1¹. On May 22, 2018, Edmund J. Wood was appointed to serve as Chapter 7 trustee. In the matrix attached to its petition, the Debtor listed one non-governmental creditor: SYNEX. *Id.*, Page 7. On June 1, 2018, the Debtor filed its schedules and statement of financial affairs. Docket Entry No. 9. Schedule A/B lists no assets. *Id.*, Page 5. Schedules D and E/F list one creditor: SYNEX. *Id.*, Pages 6-7. The Debtor asserts that it sold all of its assets on February 14, 2017. *Id.*, Page 12. The Debtor lists no gross revenue during 2018. *Id.*, Page 10.

II. AUTHORITY

A. Relief from Stay

Section 362(a)² stays certain actions against debtors that have filed for bankruptcy protection. Section 362(a)(1) stays judicial proceedings against a debtor to collect on a claim that arose prior to such debtor filing a petition for bankruptcy protection. Section 362(d) provides that the Court may grant relief from stay as to actions listed under Section 362(a) for cause. Cause is not defined by the Bankruptcy Code and is determined on a case-by-case basis. *In re McDonald*, 755 F.2d 715, 717 (9th

¹ Docket entry references refer to docket entries in the above-captioned Chapter 7 case.

² Section references refer to the United States Bankruptcy Code, found at Title 11 of the United States Code, unless otherwise indicated.

MOTION FOR RELIEF FROM STAY TO PROCEED WITH
STATE COURT LITIGATION – Page 2

BUSH KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

1 Cir. 1985). The decision to grant relief from stay is left to the discretion of the bankruptcy court.

2 *In re Castlerock Properties*, 781 F.2d 159, 163 (9th Cir. 1986).

3

4 III. ARGUMENT

5 Relief from stay is appropriate in this case. SYNNEX seeks to continue the Litigation to
6 establish the amount of its claim against the Debtor. The Litigation has been pending for more than
7 two years and its five counts involve only aspects of state law: breach of contract, fraud, negligent
8 misrepresentation, breach of express warranty, and breach of implied warranty. The Litigation is
9 ready for mediation and, if a settlement is not reached, to proceed to trial.

10 Relief from stay will not prejudice any party. The Debtor lists no assets and SYNNEX is the
11 creditor listed on the Debtor's schedules.³ The Debtor purports that it sold all its assets in 2017 and
12 discloses no revenue for 2018. Relief from stay will not impact the Debtor's non-existent operations.
13 Further, granting relief from stay will not prejudice Mr. Woods's ability to administer this estate.
14 SYNNEX will not seek to collect on any assets of the estate without further order of this Court.

15

IV. CONCLUSION

16 Based on the foregoing, SYNNEX respectfully requests an Order from the Court granting it
17 relief from stay to proceed with the Litigation.

18 DATED this 17th day of August, 2018.

19 BUSH KORNFELD LLP

20

21 By /s/ Thomas A. Buford
Thomas A. Buford, WSBA #52969
22 Attorneys for SYNNEX Corporation

23

³ On August 15, 2018, the Internal Revenue Service filed a claim in the amount of \$33,480.